

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF:	)	FIRST AMENDMENT TO
	)	SETTLEMENT AGREEMENT FOR
	)	RECOVERY OF RESPONSE COSTS
North Hollywood Operable Unit,	)	
San Fernando Valley Area 1 Superfund Site	)	
Los Angeles, California	)	U.S. EPA Region IX
	)	CERCLA Docket No. 9-2013-008
Honeywell International, Inc.; and Lockheed	)	
Martin Corporation	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
	)	42 U.S.C. § 9622(h)(1)
	)	
SETTLING PARTIES	)	
	)	
	)	
	)	

---

## **I. PRELIMINARY STATEMENT**

1. The Settlement Agreement for Recovery of Response Costs, U.S. EPA Region IX CERCLA Docket No. 9-2008-0024 ("Settlement Agreement"), entered into by the United States Environmental Protection Agency ("EPA") and Honeywell International Inc.; Lockheed Martin Corporation; Calmat Co., dba Vulcan Materials Company, Western Division ("Calmat"); and California Car Hikers Services, Inc., on August 7, 2008, is hereby amended as set forth below in this First Amended Settlement Agreement.
2. All terms defined in the Settlement Agreement shall have the same meaning when used in this First Amended Settlement Agreement.
3. This First Amended Settlement Agreement shall not create any rights or obligations with respect to any party not a signatory to the First Amended Settlement Agreement.

## **II. TERMS AMENDING THE SETTLEMENT AGREEMENT**

4. Section I of the Settlement Agreement is amended to add the following language:

The First Amended Settlement Agreement is made and entered into by EPA, Honeywell International Inc., and Lockheed Martin Corporation ("Round Two Settling Parties"). Each Round Two Settling Party consents to and will not contest EPA's authority to enter into this First Amended Settlement Agreement or to implement or enforce its terms.

5. Section II of the Settlement Agreement is amended to add the following language:

After the close of the public comment period, the Settlement Agreement became effective on September 16, 2008. Pursuant to Section V of the Settlement Agreement, the Settling Parties paid, and EPA put into the NHOU Special Account, \$1,300,920. On September 18, 2008, EPA issued a Unilateral Administrative Order, U.S. EPA Region IX CERCLA Docket No. 9-2008-0025, to the Non-Settling Parties ("2008 UAO"). All Non-Settling Parties, with the exception of Los Angeles By-Products Company, have complied with the UAO. The Non-Settling Parties paid, and EPA put into the NHOU Special Account, \$399,895. In the fourth quarter of fiscal year 2012, all of the funds in the NHOU Special Account were exhausted. Additional funding is needed in order to continue operation and maintenance of the Existing NHOU Remedy.

6. The definition of "Response Costs" in Section IV of the Settlement Agreement is amended to include costs to operate and maintain the Existing NHOU Remedy during the Interim Period that were incurred prior to execution of the First Amended Settlement Agreement.
7. Section IV of the Settlement Agreement is amended to add the following defined terms:
  - a. "First Amended Settlement Agreement" shall mean the agreement between EPA and the Round Two Settling Parties to amend the Settlement Agreement.

- b. "Effective Date" shall include in its definition, the effective date of the First Amended Settlement Agreement as provided by Section XVIII.
  - c. "Round Two Settling Parties" shall mean Honeywell International Inc. and Lockheed Martin Corporation.
  - d. "Settlement Period for the First Amended Settlement Agreement" shall mean the portion of the Interim Period during which operation and maintenance of the Existing NHOU Remedy is funded with Response Costs paid pursuant to Section V of the First Amended Settlement Agreement. The Settlement Period for the First Amended Settlement Agreement began when the funds in the NHOU Special Account collected pursuant to the Settlement Agreement, U.S. EPA Region IX CERCLA Docket No. 9-2008-0024, and the 2008 UAO, U.S. EPA Region IX CERCLA Docket No. 9-2008-0025, were exhausted. The Settlement Period shall end when the Response Costs collected pursuant to Section V of the First Amended Settlement Agreement have been exhausted.
8. Section V of the Settlement Agreement is amended to add the following language:

Within 45 days of the effective date of the First Amended Settlement Agreement, or by August 29, 2013, whichever occurs sooner, the Round Two Settling Parties shall pay a total of \$471,168 for Response Costs incurred prior to execution of the First Amended Settlement Agreement. This initial payment is intended to fund Responses Costs through September 2013.

Within 45 days of the commencement of EPA's 2014 Fiscal Year (October 1, 2013), the Round Two Settling Parties shall pay \$510,000 to EPA to fund ongoing operation and maintenance of the Existing NHOU Remedy. Within 45 days of the commencement of EPA's 2015 Fiscal Year (October 1, 2014), the Round Two Settling Parties shall make a second payment of \$510,000 to fund continued operation and maintenance of the Existing NHOU Remedy.

In the event that an alternative mechanism for fully funding the Existing NHOU Remedy is established before the last payment under the First Amended Settlement Agreement is due, the Round Two Settling Parties may petition EPA for a release from their obligation to make further payments pursuant to the First Amended Settlement Agreement. Such release shall become effective only after written notice of release from EPA.

9. Section X of the Settlement Agreement shall be amended such that the text of Paragraph 28 of the Settlement Agreement is preserved but the remaining text of Section X is replaced in its entirety by the following:

Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as provided in Section IX (Covenant Not to Sue by Settling Parties), each of the Round Two Settling Parties expressly reserves any and all rights (including, but not limited to,

pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Round Two Settling Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this First Amended Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

EPA and the Round Two Settling Parties agree that this First Amended Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that the Round Two Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this First Amended Settlement Agreement. The “matters addressed” in this First Amended Settlement Agreement are the Response Costs for the First Amended Settlement Period. EPA and the Round Two Settling Parties further agree that this First Amended Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which each Round Two Settling Party has, as of the Effective Date, “resolved its liability to the United States . . . for some or all of a response action or for some or all of the costs of such action.”

Each Round Two Settling Party shall, with respect to any suit or claim brought by it for matters related to this First Amended Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Round Two Settling Party also shall, with respect to any suit or claim brought against it for matters related to this First Amended Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Round Two Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this First Amended Settlement Agreement.

In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Round Two Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VII (Covenant Not to Sue by EPA).

Effective upon signature of this First Amended Settlement Agreement by a Round Two Settling Party, such Round Two Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Round Two

Settling Party the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined above and that, in any action brought by the United States related to the “matters addressed,” such Round Two Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to a Round Two Settling Party that it will not make this First Amended Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

10. For purposes of defining the obligations assumed by and the rights granted to/reserved by EPA and the Round Two Settling Parties by the First Amended Settlement Agreement, the Settlement Agreement is amended such that in every instance that the term “Settlement Agreement” is used (except Paragraphs 2; 8; 9.g; 9.m; 9.n; and 10), it shall include in its meaning, the “First Amended Settlement Agreement.”
11. For purposes of defining the obligations assumed by and the rights granted to/reserved by EPA and the Round Two Settling Parties by the First Amended Settlement Agreement, the Settlement Agreement is amended such that in every instance that the term “Settlement Period” is used (except in Paragraph 9.n), it shall include in its meaning, the “Settlement Period for the First Amended Settlement Agreement.”
12. For purposes of defining the obligations assumed by and the rights granted to/reserved by EPA and the Round Two Settling Parties by the First Amended Settlement Agreement, the Settlement Agreement is amended such that in every instance that the term “Settling Parties” is used (except Paragraphs 2; 10; 11), it shall include in its meaning, the “Round Two Settling Parties.”
13. Section VI, Paragraph 18 and Section IX, Paragraph 25 of the Settlement Agreement are amended such that the obligations in those Paragraphs to make payments pursuant to Paragraph 10 of the Settlement Agreement shall, for purposes of the First Amended Settlement Agreement, apply to the payment obligations assumed by the Round Two Settling Parties in Section V of the First Amended Settlement Agreement.
14. Section XIII of the Settlement Agreement is amended to substitute Jamey Watt for Rachel Loftin as the individual at EPA to receive all notices required to be given or documents required to be sent pursuant to the terms of the First Amended Settlement Agreement. Jamey Watt’s contact information is:

Jamey Watt  
U.S. EPA  
Superfund Division, SFD-7  
San Francisco, CA 94105  
[Watt.jamey@epa.gov](mailto:Watt.jamey@epa.gov)

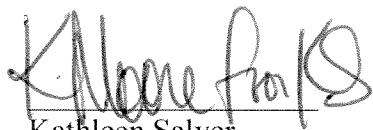
For purposes of the First Amended Settlement Agreement, no notice need be given nor document sent by the Round Two Settling Parties to any party that is not a Round Two Settling Party.

14. Section XVI of the Settlement Agreement is amended to provide that the First Amended Settlement Agreement does not represent a compromise of costs and therefore will not be published in the Federal Register.
15. Section XVII of the Settlement Agreement is amended to provide that the effective date of the First Amended Settlement Agreement shall be the date the First Amended Settlement Agreement is signed by the EPA Assistant Director, Superfund Division.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:



Kathleen Salyer  
Assistant Director,  
Superfund Site Cleanup Branch  
U.S. EPA, Region IX



Date

THE UNDERSIGNED ROUND TWO SETTLING PARTY enters into this First Amended Settlement Agreement in the matter of U.S. EPA docket No. 09-2013-008, relating to the North Hollywood Operable Unit of the San Fernando Valley Superfund Site, Area 1:

FOR ROUND TWO SETTLING PARTY: Lockheed Martin Corporation  
6801 Rockledge Drive  
Bethesda, MD 20817

By:



Brad W. Owens  
Director of Remediation

7/24/13

Date



THE UNDERSIGNED ROUND TWO SETTLING PARTY enters into this First Amended Settlement Agreement in the matter of U.S. EPA docket No. 09-2013-008, relating to the North Hollywood Operable Unit of the San Fernando Valley Superfund Site, Area 1:

FOR ROUND TWO SETTLING PARTY: Honeywell International Inc.  
2525 W. 190<sup>th</sup> Street  
Torrance, CA 90504-6099

By: \_\_\_\_\_

Benny Dehghi  
Manager, Remediation & Evaluation Services

7/22/2013

\_\_\_\_\_  
Date